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IN THE
COURT OF APPEALS OF INDIANA

LARRY P. EVANS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0611-CR-543
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John Surbeck, Judge
Cause No. 02D04-0406-FC-72

February 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Larry P. Evans appeals his conviction of Battery,[1] a class C felony, and presents the following restated issue: Was the evidence sufficient to rebut his claim of self-defense?

We affirm.

The facts favorable to the conviction are that in May 2003, Justin Franklin paid Evans approximately two-hundred dollars to repair his vehicle, left his vehicle with Evans, and returned for his vehicle several days later. Upon driving the car, Franklin was displeased with Evans's repair work and returned the following day to speak with Evans. Franklin asked Evans to produce receipts for parts, which Evans could not do. Franklin felt he was being "hustled," and asked Evans to return his money. *Transcript* at 69. The two worked out a payment plan, but after several months, during which Franklin went to Evans's home approximately once per week to collect the debt, Evans still owed Franklin money.

On May 8, 2003, Franklin again visited Evans at his home. On this occasion, the meeting became contentious, the two engaged in a "heated argument[,]" and Franklin pushed Evans onto a couch. *Id.* at 71. Evans told Franklin, "I'm going to pay you, you little 'MF', I'm tired of you coming over to my house, I'm tired of you just popping up and demanding money. . . . I'll have your money by tomorrow. [Evans] said to come by the next day and he would pay [Franklin]." *Id.* at 72.

[1] Ind. Code Ann. § 35-42-2-1(a)(3) (West, PREMISE through 2006 2nd Regular Sess.).

The following day, May 9, 2003, Franklin went to Evans's home at approximately 4:30 p.m., but Evans was not there. Franklin waited for Evans on Evans's front porch. Subsequently when Evans arrived, "[h]e got out of the truck and he came around the side and [Franklin] couldn't see it at first, but once he came around the back of the truck he had a [twelve-gauge, double-barrel] shotgun." *Id.* at 75. "[Evans] walked up the walkway with the shotgun and [said] . . . go in the house." *Id.* Franklin refused to go in Evans's home, whereupon Evans "raised the gun up and aimed it until the barrel was probably about ten inches away from [Franklin's] chest." *Id.* "[O]nce [Franklin] figured out that [Evans] was going to try and shoot [him] [he] tried to plead with him. [He] said man, keep the money, I'm not going to die over no little bit of money . . . ." *Id.* at 76. Franklin told Evans he "wouldn't show up no more," to which Evans responded, "no, you little 'MF' you're going to learn today that you don't show up at people's houses disrespecting them, embarrassing them in front of their company. Today is your day to learn and you [sic] going to pay." *Id.* Evans then "pointed the gun at [Franklin] and said you [sic] going to die, and [Franklin] said shoot. And [Evans] shot." *Id.* at 77. Evans aimed at Franklin's chest, but the round struck Franklin in the arm because he turned aside in anticipation of Evans's shot.

When Officer Cory Thomas arrived, he could "see inside to [Franklin's] internal area[;] . . . his rib cage, his shoulder socket[, and] even back to his shoulder blade." *Id.* at 98. "[Franklin] was crying out, saying that he was in a lot of pain, moaning . . ., kind of rolling around, you know, like as if you fall on the ground after you've been hit . . . . [He] had indicated and made a statement that [Evans] shot [him]." *Id.* at 98-99. Franklin also

"advised [Officer Bernard Ebetino] that he had been shot in the chest with a shotgun and that [Evans] had done it." *Id.* at 117. No weapons were found on Franklin's person or in his vicinity. Following a jury trial, Evans was found guilty of battery as a class C felony and was sentenced to 8 years, 4 of which were suspended to probation, and ordered to pay $73,363 in restitution. Evans now appeals.

Evans contends the State failed to present sufficient evidence to disprove his self-defense claim. We review a challenge to the sufficiency of the evidence to rebut a claim of self-defense using the same standard as that used for any claim of insufficient evidence. *Pinkston v. State*, 821 N.E.2d 830 (Ind. Ct. App. 2004), *trans. denied*. In so doing, we neither reweigh the evidence nor judge the witnesses' credibility. *Id.* The verdict will not be disturbed if there is sufficient evidence of probative value to support it. *Id.*

A valid claim of self-defense is a legal justification for an act that would otherwise be "criminal." Ind. Code Ann. § 35-41-3-2(a) (West, PREMISE through 2006 2nd Regular Sess.). To prevail on such a claim, the defendant must show he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. *Pinkston v. State*, 821 N.E.2d 830. An individual is justified in using deadly force only if he "reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony." I.C. § 35-41-3-2(a). When a claim of self-defense is raised and supported by the evidence, the State bears the burden of negating at least one of the necessary elements. *Id.* The State may satisfy its

burden by either rebutting the defense directly or relying on the sufficiency of evidence in its case-in-chief. *Id.*

In support of his self-defense claim, Evans relies solely on his own testimony. He testified that on May 8, the day before he shot Franklin, Franklin, on his way out the door, "turned around . . . and [] pulled the butt of a gun out of his right pocket and he told [Evans], I'm coming back tomorrow and I'm going to take this 45 and blow your ass away if you don't have my money." *Transcript* at 164. This prompted Evans on May 9 to retrieve the twelve-gauge, double-barrel shotgun from his brother-in-law's house. After he obtained the shotgun, purchased cigarettes, and returned home, Evans alleges "he looked in [his] doorway and [Franklin] was standing [there] . . ., holding onto the doorknob with his right hand in his pants pocket, as if he was holding onto a weapon." *Id.* at 165. Upon approaching Franklin, Evans alleges he (Evans) asked Franklin, "please get out of my door so I can get in my house. [] [T]hen [Franklin] . . . changed his posture to a very, real threatening, . . . gun slinger posture, you know, from [] the Westerns, . . . and [] [Evans] thought [he] saw [Franklin's] shoulders come up and [Evans] hollered don't take that gun out," and then Evans shot Franklin at point-blank range. *Id.* at 166-67.

Even assuming *arguendo* Evans's testimony established a *prima facie* claim of self-defense, the State presented sufficient evidence to rebut Evans's claim. Evans obtained a twelve-gauge, double-barrel shotgun, returned to his home, and loaded the shotgun with buckshot as he approached Franklin. By Evans's own admission, he neither saw Franklin in possession of a weapon nor saw Franklin make any movement toward

him. Moreover, the sole evidence offered in support of Evans's self-defense claim is his own testimony. The jury, after listening to all of the evidence presented by both parties, observing the witnesses' demeanor, and judging their credibility, clearly rejected Evans's version of the facts by returning a guilty verdict. We decline Evans's request to reweigh the evidence, and conclude there is sufficient evidence of probative value to support the verdict. *See Hobson v. State*, 795 N.E.2d 1118 (Ind. Ct. App. 2003) (sufficient evidence to rebut self-defense claim; defendant's invitation to reweigh testimony declined), *trans. denied*.

Affirmed.

KIRSCH, C.J., and RILEY, J., concur.